

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 94005

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-174-93

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

For Filing Administrative
Regulations

For Emergency
Regulations Only

Effective Date _____

Expiration Date _____

Governor's Signature

Nevada State Environmental Commission

Classification [] Proposed [] Adopted By Agency [XX] Temporary [] Emergency []

Brief description of action: Petition 94005 (LCB R-174-93) permanently amended NAC 444.842 to 444.846. The petition adopted new sections defining hazardous waste recycling facilities and mobile recycling units. The petition expands the definition of management of hazardous waste; and it exempts generator owned recycling units from written determinations. The amendments require mobile recycling operators to have written determinations, and it provides for a mobile recycling fee schedule.

Authority citation other than 233B: NRS 459.485, 459.490, 459.500 and 459.520

Notice date: December 22, 1993, December 29, 1993 and January 12, 1994

Hearing date: January 20, 1994

Date of Adoption of Agency: January 20, 1994

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 94005
LCB R-174-93**

The following statement is submitted for adopted permanent amendments to Nevada Administrative Code Chapter 444 by the State Environmental Commission (SEC).

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 94005 was noticed three (3) times: December 22, 1993, December 29, 1993 and January 12, 1994 in the Las Vegas Review and Reno Gazette-Journal newspapers. Comments and hearing minutes may be secured from the Office of the State Environmental Commission located in Carson City, Nevada at 333 W. Nye Lane, Room 128. No comments were received from the general public regarding this petition.

2. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1. Comments and hearing minutes may be secured from the Office of the State Environmental Commission located in Carson City, Nevada at 333 W. Nye Lane, Room 128. No comments were received from business regarding this petition.

3. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulations were adopted at the SEC hearing on January 20, 1994 with no further public comment.

4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

- a. The adopted amendments are expected to have a beneficial economic impact on Nevada businesses over both the short and long term. It is hoped that these regulations will encourage recycling by eliminating the need for operators of mobile recycling units to deposit the maximum application fee with the Division of Environmental Protection and by exempting do-it-yourself recyclers from the requirement to obtain a written determination. Businesses that are able to recycle their hazardous wastes will be able to decrease their hazardous waste disposal costs and long term liability.

- b. There are no immediate or long-term economic effects on regulated sources. There are no immediate or long-term economic effects on the public.

5. The estimated cost to the agency for enforcement of the proposed regulation.

There is no additional cost to the agency for enforcement of the proposed regulation.

6. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

There are no other state or government agency regulations which the proposed amendments duplicate.

CODIFIED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R174-93

EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: NRS 459.485, 459.490, 459.500 and 459.520

Section 1. Chapter 444 of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *"Class 3 modification" has the meaning ascribed to it in Appendix I of 40 C.F.R. 270.42 pursuant to the provisions of NAC 444.8632.*

Sec. 3. *"Facility for the recycling of hazardous waste" includes the contiguous land and any structures, other appurtenances or improvements on the land which are used for the recycling of hazardous waste.*

Sec. 4. *"Mobile unit for the recycling of hazardous waste" means any transportable equipment which is used to perform recycling of a hazardous waste and is not permanently stationed at a single facility.*

Sec. 5. *"New or expanding facility for the management of hazardous waste" means a facility for the management of hazardous waste:*

1. For which a permit is required pursuant to 40 C.F.R. Part 124, Subparts A and B, and Part 270, Subparts A to F, inclusive, but which was not issued the permit before March 28, 1990; or

2. Which has an effective permit required pursuant to 40 C.F.R. Part 124, Subparts A and B, and Part 270, Subparts A to F, inclusive, and whose owner or operator proposes the expansion of an existing unit or the addition of a new unit which requires a class 3 modification of the permit.

Sec. 6. NAC 444.842 is hereby amended to read as follows:

444.842 As used in NAC 444.842 to 444.8482, inclusive, ***and sections 2 to 5, inclusive, of this regulation***, unless the context otherwise requires, the words and terms defined in NAC 444.8422 to 444.8444, inclusive, ***and sections 2 to 5, inclusive, of this regulation***, have the meanings ascribed to them in those sections.

Sec. 7. NAC 444.8428 is hereby amended to read as follows:

444.8428 "Facility for the management of hazardous waste" includes the contiguous land, **[and]** any structures, other appurtenances or improvements on the land ***and any mobile units for the treatment of hazardous waste*** which are used for the **[treatment, storage, incineration or disposal] management** of hazardous waste. Such a facility may contain **[several units for the treatment, storage, incineration or disposal of hazardous waste or a combination of those units.] *more than one unit for the management of hazardous waste.***

Sec. 8. NAC 444.8432 is hereby amended to read as follows:

444.8432 "Management of hazardous waste" has the meaning ascribed to it in NRS 459.435 [.] **and includes, but is not limited to, the open burning of hazardous waste, open detonation of hazardous waste, and incineration of hazardous waste, including burning for the recovery of energy or destruction in boilers or industrial furnaces.**

Sec. 9. NAC 444.8446 is hereby amended to read as follows:

444.8446 1. **[The:] Except as otherwise provided in subsection 4, the:**

(a) Owner or operator of a facility for the management of hazardous waste, for which a permit is required for its operation, closure or care after closure;

(b) Person who applies for a written determination pursuant to NAC 444.8455; or

(c) Person who applies for a certificate of designation pursuant to NAC 444.8458,

[shall,] must, before the administrator may issue a permit, written determination or certificate of designation, pay a fee to the division to offset the cost to process and review the application. The amount of the fee is \$50 for each hour of staff time devoted to processing and reviewing the application for the facility, plus the amount paid to consultants by the division in connection with the application. The total fee **[may] must** not exceed:

Regulated Unit	Maximum Fee
Landfill, boiler, industrial furnace or incinerator	\$50,000
Treatment	50,000
Surface impounds, areas for thermal treatment, waste piles	25,000
Storage	25,000
Facility for recycling	10,000
Mobile unit for the recycling of hazardous waste	10,000

2. If the facility contains more than one type of regulated unit, the operator is not required to pay more for each application than the maximum fee for the regulated unit to which the highest fee is applicable, unless the facility contains a landfill and an incinerator. If the facility contains a landfill and an incinerator, the operator is not required to pay more than \$100,000 for an application.

3. **[An] Except as otherwise provided in subsection 4, an** applicant for a permit, written determination or certificate of designation shall deposit the maximum fee with the division at the time of submission. The division shall maintain an accurate account of the time devoted to each application by **[consultants] the division** and the amount paid to **[the]** consultants by the division. The division shall return to the applicant any amount remaining from the maximum fee after **a** deduction for **the fee for staff time and** the amount paid to consultants.

4. An applicant for a written determination for a mobile unit for the recycling of hazardous waste shall deposit at least 10 percent of the maximum fee with the division at the time of submission. The division shall maintain an accurate account of the time devoted to each application by the division and the amount paid to consultants by the division. If the deposit submitted pursuant to this subsection is greater than the fee for staff time and the amount paid to consultants, the division shall return to the applicant the excess amount. If the fee for staff time and the amount paid to consultants is greater than the deposit submitted to the division:

(a) The division shall bill the applicant for the balance; and

(b) Payment from the applicant on the balance must be received by the division before it issues a decision on the written determination.

Sec. 10. NAC 444.845 is hereby amended to read as follows:

444.845 1. The owner or operator of a facility for the management of hazardous waste **[that has been issued a permit]** shall, on or before March 1 of each year, pay the following annual operating fee to the division to offset partially the cost of inspection and other regulation of the facility:

Regulated Unit	Annual Operating Fee
Landfills, incinerators, boilers, industrial furnaces	\$5,000
Surface impounds, facilities for treatment of land, facilities for thermal destruction	1,000
Tanks, portable containers, waste piles, facilities for treatment or storage	500

2. If the facility contains more than one type of regulated unit, the operator is not required to pay more than the annual operating fee for the regulated unit to which the highest fee is applicable.

3. The division may assess a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that the fee remains unpaid.

4. As used in this section, "owner or operator of a facility for the management of hazardous waste" means a person who:

(a) Qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G; or

(b) Has been issued a permit pursuant to 40 C.F.R. Part 124, Subparts A and B, and Part 270, Subparts A to F inclusive.

Sec. 11. NAC 444.8452 is hereby amended to read as follows:

444.8452 1. The owner or operator of a facility for the management of hazardous waste shall, in addition to any other applicable fees, pay the following fees to the division to offset partially the cost of inspection and other regulation of the facility:

(a) For the disposal, open burn, open detonation or incineration, **[including incineration for energy] burning for the recovery of energy** in boilers or industrial furnaces, by the facility, \$20 per ton of the volume received by the facility.

(b) For the treatment or storage of a volume of hazardous waste without subsequent disposal, open burn, open detonation or incineration by the facility, \$5 per ton of the volume received by the facility, not to exceed a maximum fee of \$10,000 per calendar year if the waste treated or stored is waste generated at that facility.

2. The owner or operator of such a facility shall:

(a) Calculate the amount of hazardous waste subject to the fees on a quarterly basis;

(b) Pay the fees provided in this section, based on the volume of hazardous waste received by the facility during

each quarter of the calendar year, within 30 days after the end of each quarter; and

(c) Submit, with each payment, a detailed accounting of the volume of waste, which corresponds to the fee paid.

3. The division may assess a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that a fee remains **[due] unpaid**.

4. As used in this section, "owner or operator of a facility for the management of hazardous waste" means a person who:

- (a) Qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G; or
- (b) Has been issued a permit pursuant to 40 C.F.R. Part 124[.] , ***Subparts A and B, and Part 270, Subparts A to F, inclusive.***

Sec. 12. NAC 444.8455 is hereby amended to read as follows:

444.8455 1. **[A] *Except as otherwise provided in subsection 4, a*** person who proposes to construct or operate a facility for the recycling of hazardous waste must obtain a written determination from the administrator that the facility will operate as a facility for the recycling of hazardous waste before he commences the construction or operation of the facility.

2. **[The] *Except as otherwise provided in subsection 4, a person who proposes to construct or operate a mobile unit for the recycling of hazardous waste must obtain a written determination from the administrator that the mobile unit will operate as a mobile unit for the recycling of hazardous waste before he commences the construction or operation of the mobile unit.***

3. A written determination ***required pursuant to subsection 1 or 2*** may be requested by filing a written application with the administrator.

4. ***The provisions of this section do not apply to a person who is recycling hazardous waste which he has generated, at a unit for the recycling of hazardous waste which is owned by him and is located at the same site at which the hazardous waste is generated.***

Sec. 13. NAC 444.84555 is hereby amended to read as follows:

444.84555 1. An application for a written determination that a proposed facility will operate as a facility ***or mobile unit*** will operate as a facility for the recycling of hazardous waste ***or mobile unit for the recycling of hazardous waste*** must be accompanied by:

- (a) A detailed description of the type of recycling which is proposed, including:
 - (1) The manufacturer of the ***recycling*** equipment to be used at the facility **[;] *or mobile unit;***
 - (2) The nature of the recycling; and
 - (3) An explanation evidencing that the **[facility]**:
 - (I) ***Facility*** is a facility for the recycling of hazardous waste **[.]; or**
 - (II) ***Mobile unit is mobile unit for the recycling of hazardous waste.***
- (b) A description of the source and estimated amount of hazardous waste to be recycled on an average day and on a peak day.
- (c) A physical and chemical description of the type of hazardous waste to be accepted by the facility **[.] *or processed by the mobile unit.***
- (d) A detailed economic analysis of the recycling process to be used at the facility **[.] *or by the mobile unit,*** including:
 - (1) The projected costs to operate the facility **[;] *or mobile unit;***
 - (2) The fees that would be charged per unit of volume to process waste transported to the facility **[;] *or processed by the mobile unit;*** and

- (3) The projected value that would be recovered per unit of volume.
 - (e) [A] ***For a facility for the recycling of hazardous waste***, a description of the markets and the uses for the products to be produced and the materials and energy to be recovered.
 - (f) A comparison of the economic and environmental impact of the proposed recycling process to a process which uses material that is not considered waste when producing the same product.
2. The administrator may require the applicant to submit additional information before issuing a written determination.
3. The administrator shall not issue a written determination unless he determines, based upon the application, that:
- (a) The facility ***or mobile unit*** will be operated as a facility ***or mobile unit*** for the recycling of hazardous waste and the primary economic value is in the recycling of hazardous waste; and
 - (b) The probable beneficial environmental effect of the facility ***or mobile unit*** to the state outweighs the probable adverse environmental effect.

Sec. 14. NAC 444.8456 is hereby amended to read as follows:

- 444.8456 1. A stationary ***new or expanding*** facility for the management of hazardous waste must not be constructed within:
- (a) One mile of:
 - (1) A dwelling, school, church or community center;
 - (2) An area zoned solely for residential use;
 - (3) A public park;
 - (4) A wildlife management area;
 - (5) An area identified by the department of wildlife as a key habitat for wildlife or as a habitat for an endangered or threatened species;
 - (6) An area where surface water or wetlands occur;
 - (7) A natural or man-made geologic hazard which provides a potential for the conveyance of hazardous constituents, as that term is defined in Appendix VIII of 40 C.F.R. Part 261, to surface or ground waters; or
 - (8) An existing well which supplies public drinking water;
 - (b) An area identified by the division of historic preservation and archeology of the state department of conservation and natural resources as an historical or archeological site;
 - (c) A 100-year flood plain; or
 - (d) An area where the water table seasonally rises to within 150 feet of the surface of the ground.
2. The provisions of this section do not apply to a facility:
- (a) For community recycling;
 - (b) For community storage;
 - (c) For the storage of hazardous waste which is generated on the site of the facility; ***or***
 - (d) Which **[was issued a permit by the division on or before March 28, 1990;**
 - (e) **Which is granted interim status by the division; or**
 - (f) **To which an expansion or modification has been added which is not considered a class 3 modification.**
- For the purposes of this paragraph, "class 3 modification" has the meaning ascribed to it in Appendix I of 40 C.F.R. § 270.42 pursuant to the provisions of NAC 444.8632.] *qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G.***

Sec. 15. NAC 444.8458 is hereby amended to read as follows:

- 444.8458 1. A person who proposes to construct or operate a new ***or expanding*** facility for the management of

hazardous waste for which a permit is required must obtain a certificate of designation from the administrator before the submission of an application for the permit [.] ***or class 3 modification.***

2. An application for a certificate of designation must be accompanied by sufficient information to determine the need for the facility and by information concerning:

(a) The effect of the proposed facility on the public health, safety and welfare in the geographic area and any municipality near its proposed location, including without limitation:

(1) The risk and effect of an accident in the transportation of hazardous waste to the facility;

(2) The identification, risk and effect of any spill, discharge, fire, failure of equipment or other emergency that could occur at the facility;

(3) The identification, risk and effect of any exposure to persons of hazardous waste, or products of the degradation of hazardous waste, that could occur during the operation or after the closure of the facility;

(4) The consistency of the facility with local and regional plans and regulations for the use of land;

(5) The protection of the public from adverse effects, including the economic and environmental effects from the construction and operation, and care after closure, of the facility;

(6) The risk and effect of the facility concerning public and private sources of drinking water; and

(7) The risk and effect of the facility concerning scenic, historic and recreational areas, and wetlands, flood plains, wildlife areas and other areas that are environmentally sensitive;

(b) The density of population in the proximity of the proposed location for the facility;

(c) The public benefits of the proposed facility, including:

(1) The need in the state for the additional capacity for the management of hazardous waste;

(2) The energy and resources recoverable by the proposed facility; and

(3) The reduction in methods for the management of hazardous waste, which are less suitable for the environment, that would be made possible by the proposed facility;

(d) Whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment;

(e) The applicant's qualifications and experience in the management of hazardous waste;

(f) Whether the proposed facility complies with the provisions of NAC 444.8456; and

(g) The characteristics, sources and quantity of hazardous waste to be managed.

3. The administrator shall not issue a certificate of designation unless he determines, based upon the application, that:

(a) The probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) There is a need for the facility to serve industry in the state. The administrator shall set forth in writing the basis of his determination of need for the facility.

4. The provisions of this section do not apply to a facility:

(a) For community recycling;

(b) For community storage;

(c) For the storage of hazardous waste which is generated on the site of the facility; ***or***

(d) Which **[was issued a permit on or before March 28, 1990;**

(e) Which is granted interim status by the division; or

(f) To which an expansion or modification has been added which is not considered a class 3 modification.

For the purposes of this paragraph, "class 3 modification" has the meaning ascribed to it in Appendix I of 40 C.F.R. § 270.42 pursuant to the provisions of NAC 444.8632.] qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G.

END OF PETITION 94005 (R-174-93)

Petition **94005** was adopted by the Environmental Commission on January 20, 1994 as a permanent regulation and it became effective on March 1, 1994 upon filing with Secretary of State by the Legislative Counsel Bureau (LCB). This is LCB file **R-174-93**. **Codified 11/21/94.**